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7  
8 IN THE UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,  
11  
12 Plaintiff,  
13  
14 v.  
15 MICHAEL BRACE,  
16  
17 Defendant.

CASE NO. 1:21-CR-00055-NONE-SKO

STIPULATION TO CONTINUE STATUS  
CONFERENCE & TO EXCLUDE TIME UNDER  
THE SPEEDY TRIAL ACT

DATE: April 7, 2021  
TIME: 1:00 p.m.  
COURT: Hon. Sheila K. Oberto

16 This case is set for status conference on April 7, 2021. On May 13, 2020, this Court issued  
17 General Order 618, which suspends all jury trials in the Eastern District of California “until further  
18 notice.” Further, pursuant to General Order 611, this Court’s declaration of judicial emergency under 18  
19 U.S.C. § 3174, and the Ninth Circuit Judicial Council’s Order of April 16, 2020 continuing this Court’s  
20 judicial emergency, this Court has allowed district judges to continue all criminal matters to a date after  
21 May 2, 2021.<sup>1</sup> This and previous General Orders, as well as the declarations of judicial emergency,  
22 were entered to address public health concerns related to COVID-19.

23 Although the General Orders and declarations of emergency address the district-wide health  
24 concern, the Supreme Court has emphasized that the Speedy Trial Act’s end-of-justice provision  
25 “counteract[s] substantive openendedness with procedural strictness,” “demand[ing] on-the-record  
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27  
28 <sup>1</sup> A judge “may order case-by-case exceptions” at the discretion of that judge “or upon the  
request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order  
will impact court staff and operations.” General Order 618, ¶ 7 (E.D. Cal. May 13, 2020).

findings” in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally or in writing”).

Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory and inexcusable—General Orders 611, 612, 617, and 618 and the subsequent declaration of judicial emergency require specific supplementation. Ends-of-justice continuances are excludable only if “the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.” *Id.*

The General Orders and declaration of judicial emergency exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics, natural disasters, or other emergencies, this Court has discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

In light of the societal context created by the foregoing, this Court should consider the following case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7) (Local Code T4).<sup>2</sup> If continued, this Court should designate a new date

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<sup>2</sup> The parties note that General Order 612 acknowledges that a district judge may make “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D. Cal. March 18, 2020).

for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be “specifically limited in time”).

**STIPULATION**

Plaintiff United States of America, by and through its counsel of record, and defendant, by and through defendant’s counsel of record, hereby stipulate as follows:

1. By previous order, this matter was set for status on April 7, 2021.

2. By this stipulation, defendant now moves to continue the status conference until June 2, 2021, and to exclude time between April 7, 2021, and June 2, 2021, under 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4].

3. The parties agree and stipulate, and request that the Court find the following:

a) The government has represented that the discovery associated with this case and produced thus far includes over 76000 pages of reports, cybertips, search warrants, subpoenas, interview recordings, photographs, phone extractions, bodycam footage, and jail calls. All of this discovery has been either produced directly to counsel and/or made available for inspection and copying. There is an additional production of mostly jail calls and some follow-up reports being processed for production this week.

b) Counsel for defendant desires additional time to consult with his client, to review the current charges, to conduct investigation and research related to the charges, to review discovery in this matter, and to discuss potential resolutions.

c) Counsel for defendant believes that failure to grant the above-requested continuance would deny him/her the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

d) The government does not object to the continuance.

e) Based on the above-stated findings, the ends of justice served by continuing the case as requested outweigh the interest of the public and the defendant in a trial within the original date prescribed by the Speedy Trial Act.

f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which trial must commence, the time period of April 7, 2021 to June 2, 2021,

1 inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4]  
2 because it results from a continuance granted by the Court at defendant's request on the basis of  
3 the Court's finding that the ends of justice served by taking such action outweigh the best interest  
4 of the public and the defendant in a speedy trial.

5 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the  
6 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial  
7 must commence.

8 IT IS SO STIPULATED.

9  
10 Dated: March 31, 2021

11 MCGREGOR W. SCOTT  
12 United States Attorney

13 /s/ LAURA D. WITHERS  
14 LAURA D. WITHERS  
Assistant United States Attorney

15 Dated: March 31, 2021

16 /s/ ROGER T. NUTTALL  
17 ROGER T. NUTTALL  
Counsel for Defendant  
18 MICHAEL BRACE

19 **FINDINGS AND ORDER**

20  
21 IT IS SO ORDERED.

22 Dated: April 1, 2021

23 /s/ Sheila H. Oberto  
24 UNITED STATES MAGISTRATE JUDGE  
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